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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/887,916 | 06/21/2001 | Shigehiro Kondo | 42826.00008 | 7451 |

30256 7590 02/26/2003

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EXAMINER

WEINSTEIN, STEVEN L

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1761

DATE MAILED: 02/26/2003

4

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/887916

Applicant(s)

KONDO

Examiner

S. WEINSTEIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-9 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-9 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1⁵ is rejected under 35 U.S.C. 103(a) as being unpatentable over Krubicza

(EP878536) in view of applicant's admission of the prior art, Spack (GB 925305), Matsuki (Jp 11-169160), further in view of Kanai (Jp 5-76340), Mikami et al (Jp 4-62365) and Richter (DE 3532160).

In regard to claim 1, Krubicza discloses a method comprising disposing a leaf or leaves of hemp into an alcoholic beverage wherein the alcoholic beverage also contains hemp syrup. Thus, Krubicza discloses a hemp flavored alcoholic beverage which also contains one or more hemp leaves to present a decorative visual effect. Claim 1 differs from Krubicza in the particular alcoholic drink and the particular plant material. Thus, claim 1 recites sake which is made from rice and the drink includes an ear of rice. The ear of rice apparently plays no interactive role with the liquid. As disclosed, the ear, apparently beside having a decorative effect, can potentially be an indicator to a consumer of the type of rice used in making the sake. That is, of course, if the consumer can tell one ear^{of} rice from another. Since Krubicza discloses adding plant material to a beverage that is the same plant used in making the beverage, to select another conventional beverage such as sake and add plant material such as the rice to it for display or decorative purposes would therefore have been obvious. Claim 1 also recites a translucent bottle. From the abstract of Krubicza, it is not clear if the drink is in a bottle or drinking glass. The examiner will attempt to obtain a complete translation. In any case, as evidenced by

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applicant's admission of the prior art and as further evidenced by Spack and Matsui, it was well established to bottle alcoholic beverages and plant material. Kanai is relied on as further evidence to show bottling sake and a solid object (albeit, not a rice ear), whereas Mikami et al and Richter are evidence to show the addition of plant materials for decorative purposes in other liquids (edible such as the water of Mikami or inedible such as the perfume of Richter). In regard to the dependent claims, applicant's admission of the prior art teaches that it was conventional to pasteurize the sake (claim 3) and Mikami discloses alcohol sterilizing the plant material that is to be added to a potable drink (claims 4-6). Claims 7-9, the article claims, are rejected for the same reasons given above.

The remainder of the references cited on the USPTO 892 forms are cited as art of interest.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is 703-308-0650. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is 703-308-0661.

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S. Weinstein/mn
February 21, 2003

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
2/25/03